

REMARKS:

In the outstanding Office Action, the Examiner rejected claims 1-8, 23, 24 and 30. Claims 1, 23, 24 and 30 are amended herein, and new claim 37 is added. Claims 33 and 34 are cancelled without prejudice. Claims 9-22 and 25-29 remain cancelled and claims 31, 32, 33, 35 and 36 remain withdrawn. No new matter is presented. The amendments to the claims are supported by at least page 8, line 24 through page 9, line 30; page 13, lines 6-15; page 16, lines 2-37 and Fig. 3-5 of the Application as filed.

Thus, claims 1-8, 23, 24, 30 and 37 are pending and under consideration. The rejections are traversed below.

REJECTION UNDER 35 U.S.C. § 102(e):

Claims 1-8, 24 and 30 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,026,370 (Jermyn).

On page 19 of the Office Action, the Examiner asserts that Jermyn provides customized incentives or coupons to each customer targeted by a current promotion. The Examiner refers to col. 1, line 66 through col. 2, line 25; col. 2, line 65 through col. 3, line 4 and col. 7, line 66 through col. 8, line 8.

These portions of Jermyn, in pertinent part, specifically state:

"The host computer includes processing means for scanning the cumulative database to select consumer households that have purchased products falling within defined product categories, means for profiling each selected consumer household in terms of brand loyalty with respect to a promoted brand, means for generating incentives that differ based on the consumer household profile, and means for printing the incentives for mailing to the selected consumer households. More specifically, the processing means within the host computer further includes means for merging with the generated incentives other textual and pictorial material that further enhances the customized purchase incentives."

(col. 2, lines 13-25 of Jermyn).

"Further, the step of customizing the purchase incentive includes either providing a modest discount coupon to ensure continued brand loyalty, providing a greater discount coupon to encourage brand switching, or providing free sample information, to encourage the consumer to call for a free sample of a promoted product, respectively."

(col. 2, line 65 through col. 3, line 4 of Jermyn).

"In the final step before printing and mailing of the incentive packages (block 92), other mailing materials are merged with the incentives, as indicated in block 90. Ideally, these include descriptive text, photographic and other materials, combined into an attractive magazine format that highlights the theme and presents the printed purchase incentives."

Typically, the incentive packages are designed for seasonable presentation, such as for summer food selections, holiday food selections, back-to-school supplies, and so forth.” (col. 7, line 66 through col. 8, line 8 of Jermyn).

As can be seen from the above discussion, these portions of Jermyn do not discuss providing “[a] statement” pertaining to a product that “individually fits the transaction tendencies of each of the target customers” based on corresponding “transaction histories” of the customers. For the above-discussed reason, the Examiner does not appear to have established a priori case of anticipation. For this reason it is requested that the rejection be withdrawn.

In particular, Jermyn explicitly states that the system is directed to “automatic generation of purchasing incentives in a retail store environment [and] provides for automatic adjustment of a purchasing incentive based on the price paid for an item purchased and whether a promoted item or a competitive item is purchased” (see, col. 3, lines 25-35). That is, Jermyn is limited to group-based incentives where customers/households who are determined to have loyalty to a particular brand are provided with the same purchasing incentives (i.e., customers determined to have brand loyalty will be provided with the same incentive).

At best, col. 7, lines 42-51 of Jermyn discusses targeting consumer household with a different level of purchase incentive by providing a continuity reward to loyal purchasers and providing free samples to customers new to the product. However, the same level of incentive is provided to all customers or households that are loyal to a particular brand.

In contrast to Jermyn, the claimed invention is directed to providing individually fitted product description sentences of the same product to different customers based on corresponding purchasing trends of the customers.

Independent claim 1, by way of example, recites “determining at least one product statement that individually fits the transaction tendencies of each of the target customers determined by selecting said at least one product statement, from among a plurality of different product statements.” Claim 1 further recites, “each different product statement having different product description content that corresponds to respective transaction tendencies of the target customers identifying a property of a previously purchased product among said general properties”, where “the individually fitted product statements so as to individually inform the target customers of the particular promoting product.”

Independent claim 23 recites, “a tendency matrix table that categorizes the transaction tendencies into at least two categories and indicating different commodity description statements

identifying a property of a previously purchased commodity among said properties by a combination of the transaction tendencies.” Claim 23 further recites, “deciding on the commodity description statement for the target customers by referring to the tendency matrix table based on the individual transaction tendencies of the target customers”, where “the commodity description statement identifying a respective property of a commodity pertaining to each of the targeted customers” is sent.

Similarly, independent claims 24 and 30 recite, “custom fitting a commodity description statement... having content that corresponds to the transaction tendencies of the target customer and identifying a property of a previously purchased commodity among said properties” and the product description statement “identifies a property of a previously purchased product among properties of said product”, respectively.

Jermyn does not teach or suggest each and every element of the claimed invention including providing “statements... identifying a property of a previously purchased product among general properties of products” to inform target customers (see the above discussion of the independent claims).

For at least the above-mentioned reasons, claims depending from the independent claims are patentably distinguishable over Jermyn. The dependent claims are also independently patentable. For example, as recited in claim 6, first and second transaction tendencies determiners identify “at least one transaction tendency of the target customer in accordance with at least one product type” and “at least one product rank “ and decide “product introduction information that fits the tendencies of the target customer” accordingly.

Jermyn does not teach or suggest the above-discussed features of claim 6 including individually fitted statements identified based on “at least one product type” and “at least one product rank“, as recited in claim 6.

Therefore, withdrawal of the rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103(a):

Claim 23 was rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,649,114 (Deaton) and Jermyn.

On page 15 of the outstanding Office Action, the Examiner states that it is well established that purchase histories of consumers can be searched or scanned to determine, for instance, customers who have previously purchased a competitor’s product to cause them to

switch to another manufacturer. The Applicants respectfully traverse the Examiner's statement and respectfully request that the Examiner to produce authority for the statement. The Applicants specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge ("well-known") evidence for the rejection. As explained in the M.P.E.P.,

any facts so noticed should... server only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based.

M.P.E.P. § 2144.03

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention (see, M.P.E.P. § 2144.03(A) (the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion (see, M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, the Examiner appears to be basing the rejections, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such assertion with an affidavit when called for by the Applicant. The Examiner is called upon to support such assertion.

Further, even if the Examiner's assertion and rejection based on common knowledge is valid, the claimed invention is distinguishable as discussed below.

Deaton provides identical discounts or coupons pertaining to a particular product to all customers based on a marketing list. Deaton generates coupons based on POS transactions and issues coupons related to the particular product when the customers' purchase is rung up (see, FIG. 17 and corresponding text). As explicitly stated in the examples in Deaton, particular

categories of shoppers (coupon A shoppers) receive the same coupon while another category of shoppers (coupon B shoppers) receive another coupon (see, Examples 1 and 2 at col.102).

As mentioned above, Jermyn provides the same level of incentive to customers meeting a particular profile and does not teach or suggest "individually fitted statements" as taught by the invention.

Independent claim 23 as amended recites, "determining individual transaction tendencies of the target customers by analyzing a transaction history for each of the target customers, where the determined transaction tendencies reflect common general properties of commodities that the target customers have tended to purchase" and "a storage unit having a tendency matrix table that categorizes the transaction tendencies into at least two categories and indicating different commodity description statements identifying a property of a previously purchased commodity among said properties by a combination of the transaction tendencies." Claim 23 also recites that "the two categories comprise a speed purchasing tendency and a system type purchasing tendency" and "the commodity description statement identifying a respective property of a commodity pertaining to each of the targeted customers to be sent."

In light of the above, it is respectfully submitted that determining specific and individually fitting "commodity description statement" based on "a tendency matrix table that categorizes the transaction tendencies into at least two categories" is not well known in the art, and no support has been provided stating otherwise. Therefore, Applicants respectfully submit that the rejection is without proper foundation and should be withdrawn. If the Examiner disagrees, it is respectfully requested that support be provided.

Moreover, Deaton and Jermyn do not teach or suggest "a tendency matrix table that categorizes the transaction tendencies into at least two categories [comprising] a speed purchasing tendency and a system type purchasing tendency" and "the commodity description statement identifying a respective property of a commodity pertaining to each of the targeted customers to be sent", as recited in claim 23.

Therefore, withdrawal of the rejection is respectfully requested.

NEW CLAIM:

New claim 37 has been added to recite, "analyzing transaction histories of a first customer and a second customer... said histories indicating **a tendency of both the first customer and the second customer** to purchase a particular product" and "providing a

promotion having a **first sentence** related to the product to the first customer and a **second sentence** related to the product to the second customer, where said first sentence and said second sentence **identify different characteristics of the product**" (emphasis added).

Deaton and Jermyn do not teach or suggest the above discussed features of claim 37 including identical tendency of "both the first customer and the second customer to purchase a particular product" and "a first sentence related to the product and a second sentence related to the product identify different characteristics of the product", as recited in claim 37.

It is submitted that new claim 37 is patentably distinguishable over Deaton and Jermyn.

CONCLUSION:

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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